

**HODGSON RUSS LLP**  
The Guaranty Building  
140 Pearl Street, Suite 100  
Buffalo, New York 14202-4040  
Tel: 716-856-4000  
Fax: 716-849-0349  
Garry M. Graber, Esq.  
James C. Thoman, Esq.  
ggraber@hodgsonruss.com  
jthoman@hodgsonruss.com

**Hearing Date and Time: December 17,  
2010 at 2:30 p.m.**

*Attorneys for Unifrax I LLC f/k/a Unifrax Corporation*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:	:	x
DELPHI CORPORATION, <u>et al.</u> ,	:	Chapter 11
Debtors.	:	Case No. 05-44481 (RDD)
	:	Jointly Administered
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	x
Plaintiffs,	:	Adv. Pro. No. 07-02270 (RDD)
	:	
- against -	:	
BP, BP AMOCO CORP, BP MICROSYSTEMS	:	
INC., BP PRODUCTS NORTH AMERICA,	:	
CASTROL, CASTROL INDUSTRIAL	:	
AND UNIFRAX CORP.	:	
Defendant.	:	

x

**OBJECTION OF UNIFRAX I LLC TO THE REORGANIZED DEBTORS'  
MOTION FOR LEAVE TO FILE AMENDED COMPLAINTS**

Defendant Unifrax Corporation (“Unifrax” or “Defendant”), now known as Unifrax I LLC, by and through its counsel, Hodgson Russ, LLP, hereby objects to the Reorganized Debtors’ Motion for Leave to File Amended Complaints (the “Motion”).

**BACKGROUND**

1. On October 8, 2005, the Debtors and certain of its subsidiaries each filed voluntary petitions for Chapter 11 relief. On October 14, 2005, three additional U.S. subsidiaries of the Debtors also filed voluntary petitions for relief under Chapter 11 (the petition dates are collectively referred to as the “Petition Date”).

2. On September 28, 2007, Plaintiffs commenced this adversary proceeding by filing the Complaint to Avoid and Recover Transfers Pursuant to 11 U.S.C. §§ 547 and 550 (“Complaint”), herein incorporated by reference, under seal with the Clerk of the Court (Adversary Proceeding Docket No. 1).

3. The Complaint sought to recover, pursuant to Bankruptcy Code §§ 547 and 550, alleged preferential transfers in the aggregate amount of \$4,489,538.67 made to Unifrax and six other defendants - BP, BP Amoco Corp., BP Microsystems Inc., BP Products North America, Castrol, and Castrol Industrial (collectively referred to as the “Other Defendants”).

4. On or about March 22, 2010, BP Micro first learned that it and six other unrelated defendants had been sued over 2 1/2 years earlier in this preference action (07-02270) seeking to avoid \$4.5 million in allegedly preferential transfers (The “Preference Action”).

5. On April 12, 2010, Unifrax filed its Motion Seeking an Order (1) vacating the procedures orders obtained by the Debtors to file preference complaints under seal and to

repeatedly extend the time to serve the preference complaints; and (2) dismissing the adversary proceeding, with prejudice, because it is barred by the two year statute of limitations imposed by Section 546(a) of the Code; and (3) dismissing the adversary proceeding, with prejudice, because it is insufficiently plead; and (4) dismissing the adversary proceeding, with prejudice, because it is barred by judicial estoppel; and (5) dismissing the adversary proceeding with prejudice on the ground that it is barred by laches. In the alternative, given the pleading defects of the complaint, Unifrax sought (6) an order directing Plaintiffs to submit an amended pleading containing sufficient detail regarding the alleged preferential transfers to allow Unifrax to prepare a responsive pleading (Adversary Proceeding Docket No. 17).

6. On September 7, 2010, the Court entered its Order Granting In Part First Wave Motions to Dismiss (“First Wave Order”) (Docket #39 in Case 07-02270; Docket #20579 in Case 05-44481). The First Wave Order dismissed the Complaint.

7. On September 7, 2010, Delphi Automotive Systems, LLC (the “Plaintiff”) filed a First Amended Complaint to Avoid and Recover Transfers Pursuant to 11 U.S.C. Sections 547 and 550 (the “First Amended Complaint”) against Unifrax and the Other Defendants.

8. The Other Defendants have, to varying extents, historical ties to Unifrax, but have not had any overlap in ownership since 2003. At the time of the Petition Date in these bankruptcy cases, Unifrax and the Other Defendants were -- and continue to be -- completely separate corporate entities which do not share any operations. It is unknown why the Debtors initiated one combined cause of action against Unifrax and the Other Defendants.

9. Unifrax was provided notice of the First Amended Complaint on or about September 7, 2010, almost five years after the Petition Date. This delay is severely prejudicial to

the Defendant's ability to defend the action. This delay will result in significantly increased need for discovery in order to investigate transactions that allegedly took place over five years ago. During the Plaintiff's period of prejudicial delay, memories have faded, documents have been destroyed in accordance with normal document destruction procedures, relevant facilities or business units have been closed or sold, and employee witnesses have moved on.

**OBJECTION**

In the interest of judicial economy, Unifrax will not repeat and restate the arguments advanced by similarly situated parties in response to the Motion. Unifrax joins and adopts all relevant arguments and authorities, as if fully stated herein, set forth in Affinia Group Holdings Inc.'s and Brake Parts Inc.'s Brief in Opposition to Reorganized Debtors' Motion for Leave to File Amended Complaints (Adv. Pro. No. 07-02198, Docket No. 63) (Case No. 05-44481, Docket No. 20841) as well as in all other objections filed by similarly situated defendants as is they were set forth herein in their entirety. Unifrax reserves its right to supplement this Objection, including but not limited to providing documentary evidence, and to appear at any and all hearings and conferences scheduled on the Motion.

Dated: November 24, 2010

**HODGSON RUSS LLP**  
*Attorneys for Unifrax I, LLC f/k/a  
Unifrax Corporation*

By: /s/ James C. Thoman  
Garry M. Gruber  
James C. Thoman  
140 Pearl Street, Suite 100  
Buffalo, New York 14202-4040  
Tel: 716-848-1273  
Fax: 716-849-0349  
ggruber@hodgsonruss.com  
jthoman@hodgsonruss.com